evidence as to this, the court using its best endeavours to resolve a well-nigh insoluble situation, is driven to use its own understanding of conditions prevailing in Singapore in regard to one-man businesses of this particular kind, to arrive at a reasonable figure which does not conflict with the evidence adduced, bearing in mind that the evidence to some extent went to show that the business was not doing so well after the death of the deceased. The widow herself said that his younger brother was now only making marginal profits and that "pow" were no longer in good demand.

We have already pointed out that the widow's claim that she received $10 per day from her husband was only partially accepted by the trial judge. We do not know however how he arrived at the figure of $200 per month on the available evidence. He has not said a word about the income of the business, or whether it had four employees, or what its future was likely to be. In our opinion, a business such as the deceased's could have earned a net income of not more than 7 or 8 dollars per day and accordingly we find that the trial judge's assessment on the basis of $200 per month was clearly excessive. Doing the best we can and taking into consideration all the factors we have earlier set out, we would assess his monthly profits at about $225. Making a deduction of $75 per month all that he could reasonably spare was in the region of about $150 per month. From this $10 per month should alsi be deducted for the breakfast he had at home.

In our judgment the loss of pecuniary benefits to the dependants ought to have been assessed at the sum of $140 per month which, on a purchase for 20 years, works out at approximately $20,932. The awards to the individual dependants will accordingly be proportionately reduced by 30% in each case.

The appeal is accordingly allowed with costs.

Appeal allowed.

Solicitors: *Ng Kian Fong; Ironside & de Souza.*

LING CHENG KIEW v. PUBLIC PROSECUTOR

[A.Cr.J. (Chang Min Tat J.) January 28, 1969]
[Ipoh — Criminal Appeal No. 4 of 1969]

Road Traffic — Goods carried for purposes of trade or business — Presumption — Road Traffic Ordinance, 1958, ss. 98(1) and 144(a).

The appellant when arrested was carrying in an open pail mounted on the carrier of his motor cycle 8-10 katies of pork with a weighing machine, a knife, a piece of plank and strings and papers. He was charged with the offence under section 98(1) of the Road Traffic Ordinance, 1958, of carrying goods without there being in force a carrier's licence and secondly with the offence of such user without a valid policy of insurance in respect of 3rd party risks. He was convicted and sentenced to a fine of $25 on the first charge and $30 on the second charge and it was also ordered that he be disqualified for one year from holding a driving licence.

Held, dismissing the appeal: the inference to be drawn from the evidence was one of hawking, therefore a *prima facie* case had been raised against the appellant.

[**Editorial Note:** Reference may be made to *Mah Wah Yeow* v. *Public Prosecutor* [1961] M.L.J. 146 and *Chng Kak Tow* v. *Public Prosecutor* [1968] 1 M.L.J. 20.]

MAGISTRATE'S CRIMINAL APPEAL.

Tan Sun Cheong for the appellant.

M. Mahalingam (Deputy Public Prosecutor) for the respondent.

Chang Min Tat J. (delivering oral judgment): The appellant was charged with the offence under section 98(1) of the Road Traffic Ordinance, 1958, of carrying goods without there being in force a carrier's licence and secondly with the offence of such user without a valid policy of insurance in respect of third party risks. He was convicted and sentenced to a fine of $25 on the first charge and $30 on the second charge and it was also ordered that the appellant be disqualified for one year from holding a driving licence.

The facts which are not in dispute disclose that when he was arrested the appellant carried in a big open pail mounted on the carrier of his motor cycle about 10 katies of pork, some twine or cord, some pieces of paper and a weighing instrument.

The learned magistrate called on the defence raising against the defence the presumption under section 144(a) of the Road Traffic Ordinance. The Federal Court on 27th January 1969* decided that the presumption under section 144(a) of the Road Traffic Ordinance could only be raised against an accused person in respect of hire or reward. What I understand the decision to mean (and I am aware of a possibility of misunderstanding since I have not read the decision) is that the presumption cannot be raised to apply to a case of carriage of a man's own goods since there was no hire or reward. It is clear in view of the decision of the Federal Court that the presumption was wrongly raised against the defendant.

However an appeal is by way of re-hearing and it is incumbent upon me sitting on appeal to determine whether without this presumption there was evidence of a *prima facie* case against

* Since reported, see *Siah Ik Kow* v. *Public Prosecutor*, *ante* p. 121.

the appellant. The appellant, as I said, carried, here I make a correction, 8 to 10 katies of pork with a weighing machine, a knife, a piece of plank and strings and papers. On this evidence it was submitted to me very strenously by the learned counsel for the appellant that it had not been proved that what was carried were goods as defined in section 2 of the Road Traffic Ordinance and therefore no *prima facie* case had been raised against the appellant. With respect I do not agree. It is possible to understand that a person might purchase at any one time a large quantity of pork such as 8 katies but if this particular person is purchasing for his own consumption or for his private purposes this large quantity of pork I see no reason for him to carry with him a weighing machine, a knife and a plank, string and paper. It is obvious that the inference and the only reasonable inference to be drawn was that the knife was to cut the pork into smaller bits, the plank was a portable table on which this operation was to be performed, the weighing machine was to weigh out the pieces that were cut and the string and paper were for wrapping these bits that were hacked out from the lump of meat. This had all the indications of hawking and if there was evidence of hawking then, in my view, a *prima facie* case had been raised against the appellant.

As for his defence it is only necessary to say that it did not cast any doubt on the truth of the prosecution story in the mind of the trial magistrate or in my mind.

The appeal is therefore dismissed and the fines and the order of disqualification are confirmed.

Appeal dismissed.

Solicitors: *Ngan & Tan.*

IN RE SOON CHI HIANG

[O.Cr.J. (Raja Azlan Shah J.) February 6, 1969]
[K.L.—Miscellaneous Criminal Application No. 1 of 1969]

Banishment — Expulsion order — Motion to set aside — Ground that applicant was a citizen of Malaysia — Deprivation of citizenship — Banishment Ordinance, 1959, s. 10.

Contitutional Law — Citizenship — Deprivation of — Malaysia Constitution, arts. 14(1), 24(2) & 28 (3) — Second Schedule Part III para. 2 — Decision not subject to appeal or review in any court — Whether certiorari would lie.

In this case the applicant sought to set aside an expulsion order made against him on the ground that he was a citizen of Malaysia. The applicant was a citizen by operation of law but the order of deprivation had been made against him under article 24(2) of the Constitution on the ground that he "has voluntarily claimed and exercised in a foreign country, namely Communist China, rights available to him under the law of that country, being rights accorded exclusively to its citizens". It was argued on behalf of the applicant that the order of deprivation of citizenship was contrary to article 28(3) of the Constitution as the acts relied on as being done by him were done before Merdeka Day.

Held: the onus was on the applicant to show that he is citizen and he has not discharged that onus as he had not set aside the order of deprivation of citizenship.

Obiter: although the decision of the Federal Government under Part III of the Second Schedule of the Constitution is not subject to appeal or review in any court, this does not preclude the subject from recourse to the courts for the determination of his rights. Judicial review by means of *certiorari* cannot be taken away by implication.

Officials and Ministers must be compelled to observe the law, and it is essential that bureaucracy must be kept in its place.

Cases referred to:—

(1) *Re Hoon Tye Wan* [1965] 1 M.L.J. 90.

(2) *Re Gilmore's Application* [1957] 1 All E.R. 796 at pp. 801-803.

(3) *Soon Kok Leong* v. *Minister of Interior Malaysia* [1968] 2 M.L.J. 88.

MISCELLANEOUS CRIMINAL APPLICATION.

Ben K.C. Cheah for the applicant.

K. Somasundaram (Senior Federal Counsel) for the respondent.

Cur. Adv. Vult.

Raja Azlan Shah J.: In this application made by way of motion the applicant seeks to set aside the expulsion order made by the Minister of Home Affairs on the 6th December 1968, on the ground that he is a citizen of Malaysia pursuant to section 10 of the Banishment Ordinance, 1959.

It is not disputed that he was a citizen of Malaysia by operation of law pursuant to article 14(1)(a). On the 11th of October 1968 the Minister made an order of deprivation of citizenship pursuant to article 24(2) of the Constitution on the ground that he "has voluntarily claimed and exercised in a foreign country, namely Communist China, rights available to him under the law of that country, being rights accorded exclusively to its citizens".

It is argued on his behalf that he is still a citizen because the order of deprivation of citizenship was contrary to article 28(3) which reads:—

"A person who on Merdeka Day became a citizen by operation of law as having been citizen of the Federation immediately before that day shall not be deprived of citizenship under clause (1) or (2) of article 24 by reason of anything done on or before that day;"

In his affidavit in support of the application he deposed that in 1953 his parents sent him to Peking to further his Chinese education and he